



U.S. Department of
Transportation

Office of the Secretary
of Transportation

DEPARTMENT OF TRANSPORTATION

96 MAR 22 AM 9:47

Memorandum

OST-95-950-29

Subject: **ACTION:** ng Information into Docket 47383

Date: MAR 22 1996

From: Dennis Marvich
Senior Economist, Office of International
Transportation and Trade

Reply to: Dennis
Attn. of: Marvich
x64398

To: Myrna Adams
Chief, Docket Section
Documentary Services Division

In reviewing the contents of Docket 47383 against my files, I have discovered three comments regarding the passenger manifest information requirement found in section 203 of the Aviation Security Improvement Act of 1990 (ASIA), P.L. 101-604, that were received by the Department, but that are not currently part of Docket 47383.

Copies of these three comments are attached. I believe that they contain information that may be useful to the public consideration of a passenger manifest requirement. I request that they be placed into the Passenger Manifest Information Docket (Docket 47383) together with a copy of this memorandum.

EMBASSY OF SWITZERLAND

The Embassy of Switzerland presents its compliments to the Department of State and has the honor to bring the following matter to its attention.

The Embassy has been informed that on January 31, 1991, the U.S. Department of Transportation published in the Federal Register an advance notice of proposed rulemaking in Docket No. 47383, Aviation Security: Passenger Manifest Information. The notice suggested that the Department of Transportation is considering imposing certain data collection requirements on foreign air carriers, such as Swissair, Swiss Air Transport Company, Ltd. ("Swissair"). This proceeding, the Embassy has been informed, arises out of section 203 of the Aviation Security Improvement Act of 1990, Pub. L. No. 101-604. That statute requires that U.S. air carriers prepare, for each international flight, a manifest reflecting the name of each passenger, the passenger's passport number and the name and telephone number of a contact person for each passenger. It further requires that this manifest be turned over to the Department of State within a specified time frame following notification of an aviation disaster. The Embassy understands that the statute does not apply to foreign air carriers, but only provides that the Secretary of Transportation shall consider extending comparable requirements to foreign air carriers.

The Embassy is concerned that if they were extended to foreign air carriers, these requirements would be contrary to Article 23 of the Convention on International Civil Aviation and to Chapter 2 of the Annex 9 of the Convention where it is set forth in Standard 2.6 that "Contracting States shall not require presentation of a passenger manifest". The Embassy further submits that it would be most inappropriate to place the burden of collecting data regarding the passengers' dates of birth and passport numbers, which is to be used by governmental authorities, upon a commercial air carrier such as Swissair.

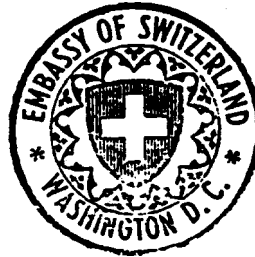
Department of State
Washington, D.C. 20520

~~Article 271~~ invites the attention of the Department of State to the ~~Article 271~~ of the Swiss Criminal Code expressly makes unlawful, and subjects to criminal sanctions, the performance in Switzerland of an act for a foreign state which by its nature is an act performed by a public authority or a public officer. Article 271 would apply to any data collection performed in Switzerland by Swissair pursuant to a Department of Transportation requirement of the sort under consideration in Docket No. 47383. Therefore, were a data collection requirement extended to foreign air carriers by the Department of Transportation, Swissair would be subjected to conflicting demands of Swiss and American law and would be unable to comply with any such requirement.

For these reasons, the Embassy requests the Department of State to convey to the Department of Transportation its apprehension over the ramifications of any proposal to extend to foreign air carriers the data collection and reporting requirements under consideration in Docket No. 47383.

The Embassy avails itself of this opportunity to renew to the Department of State the assurance of its highest consideration.

Washington, D.C.,
March 26, 1991





United States Department of State

*Assistant Secretary of State
for Consular Affairs*

Washington, D.C. 20520

April 5, 1991

TO: Mr. Jeffrey N. **Shane** - Assistant Secretary for
Policy and International Affairs

FROM: Elizabeth M. Tamposi - Assistant Secretary for
Consular Affairs *EMT*

SUBJECT: Aviation Security: Passenger Manifests From
Foreign Air Carriers

The Department of State requests that the Department of Transportation include in its regulations promulgated pursuant to the Aviation Security Act of 1990, Public Law 101-604, a requirement that foreign air carriers compile U.S. passenger information and submit such information to the Department of State in the event of an aviation disaster involving U.S. citizens overseas,

As you are aware, Section 204(a) of P.L. 101-604 and **Section 43** of the State Department Basic **Authorities** Act of 1956, as amended, provide that the State Department shall notify, in a timely manner, the families of **victims** of aviation disasters abroad concerning **citizens** of the United States directly affected **by such** a disaster. This broad responsibility encompasses **any** aviation disaster **occurring** outside the United States. We believe that this clearly includes disasters involving foreign air carriers. The high percentage of U.S. citizens traveling **aboard** foreign carriers makes their inclusion in regulations requiring the submission of information about U.S. citizens absolutely essential to the Department's fulfillment of its statutory responsibility.

The Department **also** believes **that** the inclusion of foreign air carriers will satisfy the concerns of certain **U.S.** air carriers who believe that the application of such a regulation only to them would imply that U.S. air carriers are somehow less safe than foreign carriers.

While we are mindful of the need to expeditiously obtain information about U.S. citizens, we are also aware that other countries will be concerned about the degree to which the U.S. Government attempts to require **activities** which take place outside U.S. territory. We believe that possible foreign government objections to the Rule on the basis of its extraterritorial application would be lessened if the information collection requirement were limited to U.S. citizens on flights to and from the United States.

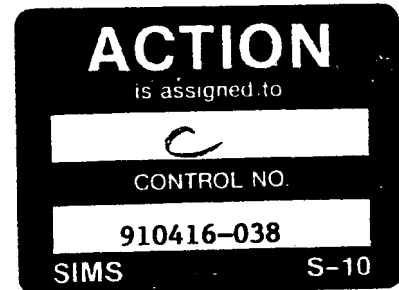


THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.

April 12, 1991

AIR-1-IC:P WK



Sam
Dear Mr. Secretary:

The Department of Transportation has published a proposed rulemaking, Notice 91-2, on the collection of passenger manifest information consisting of the full name of each passenger, the passport number (**PPN**), and the name and telephone number of a contact for each passenger. The proposed rule does not include the date of birth (DOB) as a mandatory element.

U.S. Customs has been actively pursuing expanding implementation of the Advance Passenger Information System (**APIS**) for over 3 years. This voluntary program allows carriers to transmit the full name, PPN, country of issuance, and DOB of each passenger prior to arrival in the U.S. This APIS data is used to identify high-risk passengers and to facilitate the processing of low-risk travelers. DOB is an essential data element of APIS. We propose that you include DOB as a mandatory field.

We feel that this additional field also serves the interest of the United States Government by allowing the Federal Inspection Services (**FIS**) to expedite the entry of the low-risk traveler. Additionally, high-risk travelers would be targeted through our enforcement database for an intensive examination more effectively. This database provides information on suspect terrorist activity and can be used as a tool to support aviation security.

However, only through improved passenger facilitation as an incentive will the airlines agree to participate fully in APIS. We hope that you will endorse our proposal, since it serves the needs of both of our agencies, other Government agencies, airport operators, airlines, and the traveling public. We look forward to your positive action so that we can serve all parties to the fullest.

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If you require any additional information oh APIS, please have a member of your staff contact Mr. **Michael Lovejoy** at (202) 566-5607.

Sincerely,

A handwritten signature in cursive script that reads "Carol".

Carol Hallett
Commissioner

The Honorable
Samuel K. Skinner
Secretary of Transportation
Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590